



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

March 24, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Robert Woodard**
Tax Registry No. 907600
Brooklyn North Warrant Section
Disciplinary Case Nos. 82537/07 & 83270/07

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on June 10, 2008 and was charged with the following:

DISCIPLINARY CASE NO. 82537/07

1. Said Detective Robert Woodard assigned to Warrant Section, while off-duty, on or about January 1, 2006 through August 18, 2006, in the confines of Kings County, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so, to wit: said officer worked as a manager for the Atlantic Center Mall.
P.G. 205-40, Page 1, Paragraph 1

**OFF-DUTY EMPLOYMENT,
PERSONNEL MATTERS**

2. Said Detective Robert Woodard, assigned as indicated in Specification #1, while off-duty, on or about January 1, 2006 through August 18, 2006, in the confines of Kings County, did wrongfully work in excess of twenty (20) hours of off-duty employment on thirty-one (31) occasions.

P.G. 205-40, Page 6, Paragraph #c (4)

**OFF-DUTY EMPLOYMENT,
PERSONNEL MATTERS**

3. Said Detective Robert Woodard, assigned as indicated in Specification #1, while off-duty, on May 24, 2006, at a location indicated in Specification #1, was involved in a police incident, and said Detective did thereafter fail and neglect to request the response of a Patrol Supervisor, precinct of occurrence as required.

P.G. 212-32, Page 1, Paragraph 2

COMMAND OPERATIONS

DISCIPLINARY CASE NO. 83270/07

1. Said Detective Robert Woodard, assigned to 580 Warrant Section, while off-duty, on or about August 20, 2006, through December 4, 2006, in the confines of Kings County, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so, to wit: said Detective worked as a manager for the Atlantic Center Mall.

P.G. 205-40, Page 1, Paragraph 1

**OFF-DUTY EMPLOYMENT,
PERSONNEL MATTERS**

DETECTIVE ROBERT WOODARD
DISCIPLINARY CASE NOS. 82537/07, 83270/07

2. Said Detective Robert Woodard, assigned as indicated in Specification #1, while off-duty, on or about October 2, 2006, in the confines of Kings County, while working as the manager of security for the Atlantic Center Mall, did wrongfully fail and neglect to request the response of a Patrol Supervisor, precinct of occurrence as required upon being informed by an individual identity known to the Department, that he was threatened by an off-duty Member of the Department. (As amended)

P.G. 212-32, Page 1, Paragraphs 1 and 2

OFF-DUTY INCIDENTS

3 Said Detective Robert Woodard, assigned as indicated in Specification #1, while off-duty, on or about October 2, 2006, in the confines of Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Detective failed to notify the Internal Affairs Bureau, after an individual known to the Department, identified himself to said Detective as a Police Officer, then recanted his statement about being a Police Officer, and was in possession of a New York City Police Department placard.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT**

4. Said Detective Robert Woodard, assigned as indicated in Specification #1, while off-duty, on or about October 2, 2006, in the confines of Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Detective Woodard, after being informed by an individual, identity known to the Department, that he was a Police Officer, failed to request Department information from said individual, and when said individual recanted his statement about being a Police Officer, Detective Woodard failed to investigate said individual's possession of a New York City Police Department placard and take necessary corrective action. (As amended)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT**

In a trial decision and Memorandum dated September 24, 2008, Assistant Deputy Commissioner Daniels-DePeyster found Respondent Woodard GUILTY of Specification No. 3 and accepted the Respondent's PLEADING GUILTY to Specification Nos. 1 and 2 in Disciplinary Case No. 82537/07. Further, Respondent Woodard was found NOT GUILTY of Specification Nos. 2,3 and 4, and his PLEADING GUILTY to Specification No. 1 was accepted, in Disciplinary Case No. 83270/07. Having read the Memorandum and analyzed the facts of these cases, I agree with the findings, but disapprove the recommended penalty.

The Respondent's continued course and scope of misconduct regarding his engaging in unauthorized off-duty employment, merits a greater penalty consequence than was recommended after trial. Therefore, the Respondent will forfeit twenty (20) Vacation days in these matters.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

September 24, 2008

MEMORANDUM FOR: Police Commissioner

Re: Detective Robert Woodard
Tax Registry No. 907600
Brooklyn North Warrant Section
Disciplinary Case Nos. 82537/07 & 83270/07

The above-named member of the Department appeared before me on June 10, 2008 and June 11, 2008, charged with the following:

Disciplinary Case No. 82537/07

1. Said Detective Robert Woodard assigned to Warrant Section, while off-duty, on or about January 1, 2006 through August 18, 2006, in the confines of Kings County, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so, to wit: said officer worked as a manager for the Atlantic Center Mall.

P.G. 205-40, Page 1, Paragraph 1 – OFF-DUTY EMPLOYMENT, PERSONNEL MATTERS

2. Said Detective Robert Woodard, assigned as indicated in Specification # 1, while off-duty, on or about January 1, 2006 through August 18, 2006, in the confines of Kings County, did wrongfully work in excess of twenty (20) hours of off-duty employment on thirty-one (31) occasions.

P.G. 205-40, Page 6, Paragraph # c (4) – OFF-DUTY EMPLOYMENT, PERSONNEL MATTERS

3. Said Detective Robert Woodard, assigned as indicated in Specification # 1, while off-duty, on May 24, 2006, at a location indicated in Specification # 1, was involved in a police incident, and said Detective did thereafter fail and neglect to request the response of a Patrol Supervisor, precinct of occurrence as required.

P.G. 212-32, Page 1, Paragraph 2 – COMMAND OPERATIONS

COURTESY • PROFESSIONALISM • RESPECT

Disciplinary Case No. 83270/07

1. Said Detective Robert Woodard, assigned to 580 Warrant Section, while off-duty, on or about August 20, 2006, through December 4, 2006, in the confines of Kings County, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so, to wit: said Detective worked as a manager for the Atlantic Center Mall.

P.G. 205-40, Page 1, Paragraph 1 – OFF-DUTY EMPLOYMENT, PERSONNEL
MATTERS

2. Said Detective Robert Woodard, assigned as indicated in Specification # 1, while off-duty, on or about October 2, 2006, in the confines of Kings County, while working as the manager of security for the Atlantic Center Mall, did wrongfully fail and neglect to request the response of a Patrol Supervisor, precinct of occurrence as required upon being informed by an individual identity known to the Department, that he was threatened by an off-duty Member of the Department. (*As amended*)

P.G. 212-32, Page 1, Paragraphs 1 and 2 – OFF-DUTY INCIDENTS

3. Said Detective Robert Woodard, assigned as indicated in Specification # 1, while off-duty, on or about October 2, 2006, in the confines of Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Detective failed to notify the Internal Affairs Bureau, after an individual known to the Department, identified himself to said Detective as a Police Officer, then recanted his statement about being a Police Officer, and was in possession of a New York City Police Department placard.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

4. Said Detective Robert Woodard, assigned as indicated in Specification # 1, while off-duty, on or about October 2, 2006, in the confines of Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Detective Woodard, after being informed by an individual, identity known to the Department, that he was a Police Officer, failed to request Department information from said individual, and when said individual recanted his statement about being a Police Officer, Detective Woodard failed to investigate said individual's possession of a New York City Police Department placard and take necessary corrective action. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 3 in 82537/07¹ and Specification Nos. 2, 3, and 4 in 83270/07. The Respondent, through his counsel, pleaded Guilty to Specification Nos. 1 and 2 in 82537/07 and Specification No. 1 in 83270/07 and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent having pleaded Guilty is found Guilty as charged in Specification Nos. 1 and 2 in Disciplinary Case No. 82537/07 and Specification No. 1 in Disciplinary Case No. 83270/07. The Respondent is found Guilty of Specification No. 3 in Disciplinary Case No. 82537/07. The Respondent is found Not Guilty of Specification Nos. 2, 3, and 4 in Disciplinary Case No. 83270/07.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Reynolds Colon, Police Officer Eon Adamson, Sergeant Kenneth Noonan, Police Officer Frederick F. Mitchell, and Stephen Darnel Scales as witnesses. The Department also placed in evidence the Respondent's off-duty employment application for renewal with a final action approval date of December 5, 2006 (Department's Exhibit ["DX"] 1).

¹ The Respondent originally pleaded Guilty to and had an allocution regarding Specification No. 3 of case 82537/07. However, when the Department decided to call Reynolds Colon after the Respondent's statement, the Respondent rescinded the Guilty plea for Specification No. 3.

Reynolds Colon

Colon, a truck driver, is a resident of [REDACTED] County. He estimated he had lived in [REDACTED] seven years. He testified that he had been employed by Manhattan Beer Distributors, a beer company, for seven years, and was working May 24, 2006 for the same company. He stated that he had two deliveries on that date, Pathmark and a place in the Atlantic Center Mall called "Wild Buffalo Wings." He said that he made a delivery at 625 Atlantic Avenue every week. He testified that the only unusual thing that occurred that day was that he had an altercation with a man who worked security there, and identified the Respondent as that individual.

Colon stated that he was delivering a barrel of beer when the verbal altercation started. He said that the Respondent was standing behind him and watching him, "doing his job probably," but Colon did not know who he was. He testified that he removed a keg of beer from the truck and dropped it on the ground. When he dropped it, the Respondent told him that he was "breaking his F'ing sidewalk." He denied purposely dropping the beer on the sidewalk. He said that he had had a delivery in Pathmark the previous day, and the gate inside the elevator had fallen on his hand and damaged his wrist, so his wrist was weak. He stated that he went to work the next day, thinking that his wrist would be okay if he worked, but it was still weak.

Colon denied that he caused the sidewalk to crack. He stated that the Respondent confronted him and said he was "breaking his fucking sidewalk." He said that he told the Respondent sarcastically, "My taxpayer dollars pay for it, so don't worry about it." He admitted he did not know who the Respondent was. He testified that it was about to "get physical" because of the way the Respondent reacted to him and the way he, in turn, reacted to the Respondent. He stated that the Respondent approached him in a manner Colon thought was physical, so Colon approached as well. He said that he thought it would be a physical altercation

because the Respondent reacted in a verbally aggressive manner. He denied it was “in a calm matter,” and added he immediately “aggressed” toward the Respondent.

Colon testified that the Respondent distinctly said he was the manager of security, and Colon was not going to make any delivery there because of his attitude, so he should take his “fucking truck” and go around the corner and “get the hell out of there.” He acknowledged that he asked the Respondent if his partner could make the delivery. He said that he told the Respondent, “Listen, you have a problem with me, if you don’t want me on your property; I will be more than welcome to leave.” He stated the Respondent said neither Colon nor his partner would make the delivery, and that he wanted Colon to “take [his] truck and get the fuck out of [t]here.” He said he called his supervisor, who came and told him he was in trouble because of the altercation on company time. He testified that he contacted the police before he contacted his superior, and did so because of the Respondent’s body language and the way he approached him. He added that the Respondent then told him that he was “going to punch [him] in [his] face.”

Colon acknowledged that he was interviewed by an investigator with the Department, and told him that the Respondent threatened to punch him in the face. He stated that the police responded quickly. He testified that a patrol car came to the scene, and a member of the service approached him and asked whom Colon had the problem with, at which point he indicated the Respondent. The officer said the Respondent was a detective and asked Colon if he knew that, but Colon admitted he did not. He said the officer told him he would “try to diffuse the situation and see if [they] could make things just disappear.” Colon stated the officer told him to apologize to the Respondent, and he did. He noted that the Respondent told him he still was not going to make the delivery.

Colon acknowledged that his partner had a conversation with the Respondent, but admitted he was not present for it. He stated the Respondent told him to get off the property, and then spoke to his partner. He testified that he could make deliveries by himself or with his partner, and his partner accompanied him that day. He acknowledged that he had made deliveries by himself. He denied that his partner delivered the beer, and noted that the Respondent did not allow him to do so. He agreed that he observed one of the responding officers, Adamson, speaking to the Respondent, but admitted he did not hear any of the conversation. He acknowledged that Adamson came back to him after the conversation and told him, "Do what you got to do." Colon said Adamson told him he tried to talk to the Respondent, but he was adamant in his refusal to let Colon make the delivery. Colon noted that he remembered his partner making the delivery, although he was not permitted to go inside the building. He stated there was no mess on the sidewalk.

On cross-examination, Colon acknowledged that he had sustained an injury the day before the delivery when a gate came down and hurt his wrist in Pathmark. He agreed that the kegs of beer were very heavy and the injury to his wrist prevented him from handling them the way he normally would. He admitted that his keg of beer fell to the ground before his encounter with the Respondent, and initially provoked the Respondent to approach him.

Colon conceded that May 24, 2006 was not the first time he had an altercation with an employee working security for the Atlantic Center Mall. He admitted that there was another incident a few weeks prior. He stated that the other verbal dispute was with one of the men who approached him from behind the day he felt physically threatened by the Respondent. Regarding the prior incident with the other individual, Colon said that the security officer told him to move his truck because he could not park where he was parked, and Colon asked him where he

expected him to park the truck because it was a "huge truck." He admitted that he was sarcastic, but denied that sarcasm was his normal response to the requests of security officers. He agreed that they have a job to do. When asked why he was sarcastic to the individual who asked him not to park his truck in a certain spot, Colon replied, "Because it was packed there. Where was I supposed to park?" He acknowledged that he had a problem with that individual, whom he described as a "large black man...maybe about 6'4". He denied that he described him in that manner because he felt intimidated by him, but said it was because he had seen him there before and knew he worked security.

Colon agreed that the individual in the prior dispute was present during the dispute with the Respondent. He said the individual came up behind him as he approached the situation, and he called 911 because he felt physically threatened. He acknowledged that he felt physically threatened because the security officer he had an altercation with a few weeks prior approached him from behind. He denied knowing that the Respondent was a member of the service during the exchange. He further denied that the Respondent identified himself as a member of the service at any point in time, and agreed that that had nothing to do with why he felt intimidated. He said that the Respondent was not present during the prior incident with the "large black man," and noted that this incident he had with him was the only time he met the Respondent.

Colon agreed that he called 911 from his cellular telephone, and admitted that the only thing he told them was that he was trying to make a delivery but needed police assistance because the security officer would not let him. He acknowledged that he never told the 911 operator that he felt threatened or that he felt he was going to be assaulted. He agreed that the police responded at some point in time and he spoke with one particular police officer, Adamson. He said he told Adamson that the Respondent made threats to him or threatened to assault him.

When he told Adamson that the Respondent had threatened him, Adamson replied that the Respondent was a detective for the Warrant Squad. He stated he told Adamson that the Respondent had threatened to punch him in the face. He said that he knew the Respondent was a member of the service at the time of testimony, but he had not known before. He acknowledged that the same police officer who told him the Respondent was a detective also said he would try to talk to the Respondent and diffuse the situation so Colon could make his delivery.

Colon admitted that he attempted to file a complaint against the Respondent at that point in time, and stated his "objective" was that the Respondent did not permit him to make the delivery. He agreed that he just wanted to make the delivery. He acknowledged that he called his supervisor, who told him he would be in trouble if the delivery was not made.

Colon agreed that the Respondent said he was "breaking [his] fucking sidewalk" when he first approached him, to which Colon responded sarcastically that his taxpayer dollars paid for that sidewalk. He acknowledged that the Respondent informed him it was not a public sidewalk but a private mall. He agreed that the Respondent said he would punch him in the face during the verbal exchange. When asked if he thought the Respondent meant it, he replied, "I can't really call it." He noted that the Respondent's tone and body language were aggressive. He stated that the Respondent approached him, but denied that he made a motion to punch him in the face or raised his hands to him.

Colon stated that he had to go around the corner, so he did not actually see when the beer was picked up, but he believed that the Respondent made the people from the restaurant receive the delivery, as Colon could not go inside the building. He said that the name of the place was Buffalo Wild Wings. When told it was not open in May of 2006, he argued that it was. When

told it was Houlihan's at the time, he replied that Houlihan's was right next door, and noted they were separated by a hallway.

On redirect examination, Colon estimated that the incident in which he was told not to deliver the beer took 45 minutes. When asked how many kegs of beer he dropped on the sidewalk in the presence of the Respondent, he stated that he did not take any more off the truck after the initial one and had only removed one at that point.

On questioning by the Court, Colon stated that he removed one keg of beer before he saw the Respondent. He said the Respondent was standing directly behind him, but he did not know who he was because there was a Department of Motor Vehicles office there, and noted he could have been anybody. He stated that when the Respondent approached him saying he was "breaking his fucking sidewalk," Colon thought he was "just a nobody just being nosy." He denied continuing to remove kegs from the truck as he was busy talking to the Respondent. He stated that he did not take anything off the truck and his partner told him what he had to remove. He admitted that he did not know what his partner removed from the other side. He said that his partner was on one side of the truck while he was on the other side of the truck, which he described as a "side loader." He explained there were different bays on "side loaders" that opened up "like a soda truck," and he removed beer from one side while his partner removed it from the other side. He admitted that he could not remember whether he saw his partner remove any kegs. He stated that the keg the Respondent complained about happened to be a "very, very heavy keg." He agreed that that was the only one that he took off the truck the entire time he was there. When asked if he checked the sidewalk after he removed the keg, he said that the sidewalk was damaged before he got there. He acknowledged that he had seen damage to the sidewalk, and it had been cracked "[m]any, many, many months before that." He stated that he

did not damage the sidewalk at that point. He said there were "plenty of cracks," and noted that the whole sidewalk was cracked. He acknowledged that was the sidewalk in the area he was making the delivery. He admitted that they were not supposed to be parked there, but said they parked in a "no parking" zone because there was nowhere else to park.

Police Officer Eon Adamson

Adamson, a 14-year member of the Department, has been assigned to the 88 Precinct his whole career. He stated that he worked patrol and worked on May 24, 2006. He believed his assignment was "sector Eddie Frank." He acknowledged that he responded to 625 Atlantic Avenue and noted they receive a lot of calls to that location. He stated that he responded to 625 Atlantic Avenue because they had received a radio transmission for a "10-52," a dispute. He said that when he responded, he found a complainant who stated that he was having difficulty with security regarding making a delivery. He acknowledged that the complainant was the individual he later came to know as Colon.

Adamson testified that the Respondent would not allow Colon to enter the building to make a delivery. He admitted that he did not know whether it stemmed from a prior incident. He estimated that his conversation with Colon lasted several minutes. He stated that Colon admitted that the conversation between him and the Respondent had been "a little difficult." He said they "must have been going at it" before he got there. He admitted that he did not know the extent of the conversation before he arrived, but Colon made it seem as though he and the Respondent "ha[d] some words" with each other because the Respondent did not allow Colon entry.

Adamson acknowledged that he also had a conversation with the Respondent on that date. He recalled the Respondent stating that he did not allow Colon entry into the mall. He believed he asked what the problem was and the Respondent said Colon did not follow the rules as far as unloading his truck for the delivery, and, because of that, he was not allowed into the mall. He testified that he tried to mediate the situation, but admitted to Colon he could not say whether or not he was allowed in the mall. He added that "they" might have the right to restrict him, but he was not sure. He told Colon to call his boss or the store and have them call security to see if they could work out the situation and send someone else to make the delivery.

Adamson agreed that he recognized the Respondent as a member of the police service when he arrived at the scene, but denied that the Respondent identified himself as such. He did not remember mentioning that the Respondent was a member of the service. He stated that anything was possible, but he did not recall that because the Respondent was not working as a police officer at the time. He knew that the Respondent was employed by the mall and was working in his capacity as a mall security officer. He admitted that he received a Command Discipline as a result of that case for failing to notify a supervisor of an incident involving an off-duty member of the service.

On cross-examination, Adamson agreed that he responded to the location after a call on the radio. He stated that the "radio run" came over as a "10-52" at 625 Atlantic Avenue. He admitted that he did not recall the 911 call mentioning a dispute between security and a vendor trying to make a delivery nor whether it was a "rush job" or not. He did not remember any allegations of an assault or a threatened assault in the "radio run." He agreed that he interviewed Colon, the complainant who had called 911, when he arrived. He acknowledged that Colon told him that he had difficulties trying to make a delivery at the location. He did not recall Colon

making any allegations of misconduct against the Respondent during their conversation. He admitted that he did not know what happened before he arrived.

Adamson did not recall Colon telling him the Respondent threatened to punch him in the face. He acknowledged that he would have taken note of something like that. He agreed that, in his mind, this was just a civil dispute between a vendor trying to make a delivery and someone working security at the mall. He acknowledged that he had to give a disposition of the job back to the dispatcher when he finished it and believed it was "10-91," "Non-crime corrected," meaning that he did not become aware of any allegations of a crime having been committed at the location.

Adamson agreed that he spoke with the Respondent after he spoke with Colon, and admitted he was a "little animated" because of what had happened. He remembered the Respondent speaking to him at the car and saying Colon could make a complaint if he wanted to because the Respondent "had his papers in, meaning, [...] off-duty employment or whatever the case may be." He assumed that was how Colon knew that the Respondent was a member of the service, because he never told Colon. He said it was not his nature to do that, especially because the Respondent was not in uniform nor was he working as a member of the service. He agreed that the Respondent mentioned he had his papers in, which Adamson interpreted as the Respondent saying he was authorized to work at that location.

Adamson did not recall asking any patrol supervisor to respond to the location. He stated that he told the supervisor later in the day that he had a dispute at the mall and informed him of the "specifics" so that he would be aware. He admitted that he did not call a supervisor at the time, and agreed that he did not believe any crime or wrongdoing of any kind had been alleged at that time. He acknowledged that he was questioned about the incident by investigators, and,

when asked whether he notified a supervisor that a member of the service was involved in a dispute, he replied, "No, no sir, because there was no crime alleged. There was [...] no allegation of wrongdoing, or harassment of any kind that [he] thought to the level needed to notify the boss." He agreed it was simply a dispute over the Respondent, working in his capacity as security for the mall, saying Colon was not allowed in the building to make a delivery. He acknowledged that he was subsequently presented with a Command Discipline for failing to notify the patrol supervisor and lost four hours as a penalty.

On questioning by the Court, Adamson stated that the Command Discipline was a Schedule "A" Command Discipline.

Sergeant Kenneth Noonan

Noonan, a nine-year member of the Department, has been assigned to the 9 Precinct Detective Squad for approximately three weeks. He testified that he was previously assigned to Internal Affairs Bureau ("IAB") Group 32. He acknowledged that, while at IAB Group 32, he was involved in an investigation where the Respondent became a subject. He stated it came up during another investigation that the Respondent was a Director of Security for the Atlantic Center Mall. He said that the investigation involved a Police Officer Joycetta Ray, who was involved in a dispute with a security guard at the mall. He testified that Ray harassed the security guard, was verbally abusive to him, and threatened that "her boys or her boyfriend" would come back and "beat him up." He added that the security guard Mr. Scales was approached a short time later by an individual later identified as [REDACTED], Ray's boyfriend, who pushed, shoved, and threatened him before it was broken up. He noted that Scales told him he had completed an incident report.

Noonan agreed that he interviewed Scales with respect to the incident. He stated that Scales told him Ray parked her car illegally and he approached her. He said that they exchanged words and she threatened him. Scales told Noonan he had Ray's vehicle towed because it was parked illegally, and then prepared an incident report. He agreed that Scales mentioned he had a conversation with the Respondent about the incident involving Ray in which the Respondent told Scales to have Ray's car towed. He testified that Scales indicated he had an altercation with an off-duty police officer parked illegally who put her parking plaque in the windshield. He admitted that although Scales told him he prepared an incident report, they were unable to obtain it. He agreed that Scales told him the incident report procedures, including that they are filed in the security office and he gives them to the security supervisor. He stated that at a later date he met with the Respondent, who looked for the incident report but could not find it.

Noonan testified that [REDACTED] showed up at the mall, approached Scales, threatened him, and began to shove him. He stated that there was an altercation between Scales and [REDACTED] shortly after which Scales called for help on his security radio. He denied that Scales mentioned whom he spoke to when he called, and believed Scales just called for help and other security guards, including the Respondent arrived. Scales told Noonan that the altercation was broken up and [REDACTED] drove away. However, the Respondent said in his interview that he approached [REDACTED] asked him if he could help him with anything, and [REDACTED] said, "No, I'm a police officer." He said that the Respondent questioned him further, saying, "Oh, you're a police officer?" to which [REDACTED] replied, "No, no, actually I am not a police officer." The Respondent told Noonan that he observed a green restricted-use Department parking placard in the windshield of [REDACTED]'s vehicle. He stated that the Respondent did not do anything about the placard in the window, but let [REDACTED] leave.

Noonan testified that he received investigative documents regarding the towing of the vehicle, including a copy of the tow receipt for Ray's car signed by the Respondent. He agreed that he conducted an Official Department Interview of the Respondent. He acknowledged that he recalled apprising the Respondent about the Patrol Guide violations involving making false and misleading statements during the course of an Official Department Interview. He agreed that the Respondent had representation there, and that he confronted the Respondent with the towing receipt during the course of the investigation. He believed the Respondent told him that anyone could sign the receipt. He also believed the Respondent mentioned that he signed it. He noted that he asked the Respondent about his conversation with Scales.

Noonan stated that the Respondent told him Scales said he had an altercation with a police officer and he assumed it was accurate based on the fact she had a parking plaque. He testified that, as a result of the investigation, the Respondent was served with Charges and Specifications. He stated that the substantiated allegations against the Respondent were unauthorized off-duty employment, failure to take police action with regard to allowing [REDACTED] to leave, failure to notify IAB regarding Ray's involvement in an off-duty incident, and failure to notify the Desk Officer. Noonan acknowledged that he attempted to retrieve the incident report filled out by Scales, but was not successful.

On cross-examination, Noonan stated he believed Scales and the Respondent told him Scales prepared an incident report. He then said he was "almost positive" that the Respondent told him Scales prepared an incident report, based on the fact that Scales told the Respondent he had done it. He agreed that the Respondent told him he looked for an incident report but could not find it. He acknowledged that Scales never filed a police incident report. He said Scales never called 911 or requested police response. He did not believe Scales told him he did not feel

the need to call the police because no one was injured. He did not think Scales was ever asked whether he called the police but whether he would like to make a report, to which Scales indicated, "No."

Noonan remembered interviewing Scales, but could not remember when he did so. He acknowledged that he prepared paperwork regarding his interview of Scales, including a worksheet. He agreed that the worksheet refreshed his recollection of the date, and said it was October 13, 2006. He stated that the interview took place in a vehicle in the vicinity of the Atlantic Center Mall, and agreed that he had an accompanying investigator with him at the time. He acknowledged that he specifically asked Scales whether anyone had called 911, but Scales said no one had. He agreed that he asked whether Scales wanted to file an incident report himself, but he declined to do so. He admitted that he had never seen the incident report Scales said he completed on that date. Noonan believed, after speaking with Scales, that the Respondent told him to tow the car.

Noonan admitted as he reviewed the transcript that Scales told him the Respondent was not present when the female's car was towed. He acknowledged that Scales told him specifically that Bridges was his supervisor on the date in question, and she had the car towed. He admitted that the Respondent was not actually present during the initial incident between Scales and Ray. He denied that his testimony which claimed that the Respondent knew Scales had done an incident report about a female officer was based solely on his interview of the Respondent. He added that Scales also said he did an incident report. He admitted he did not recall Scales telling him he went up to the office to do the incident report prior to the incident with [REDACTED] or that, after he had Ray's car towed, he told the Respondent that she was a female police officer.

Noonan agreed that he reviewed statements people made to him prior to testifying, but admitted there were several people interviewed throughout the course of the investigation, as it was very broad. He acknowledged that he had a chance to review his interview with Scales prior to the day of testimony. After reviewing the transcript, he denied Scales said during his interview that he told the Respondent that he had had an incident with a female police officer when he went to fill out the incident report after he had her car towed. He acknowledged that the Respondent told him he became aware at some point that Scales had an incident with a female police officer. He admitted he was not certain whether the Respondent found out after the incidents were over. He believed the Respondent said later in his interview that he became aware Ray was a police officer, but the timeline was not clear as to when the Respondent found out. He agreed that the Respondent said he did not know she was a member of the service at that time, but Noonan believed the Respondent said he found out she was in his next line of questioning. He was not certain whether the Respondent said he was unaware Ray was a female officer at the time of the incident. After reviewing the transcript, he believed it said Scales called the Respondent between the two incidents to tell him that he had a dispute with a female or female MOS whose boyfriend threatened to come back and "beat him up." He acknowledged that the portion of the transcript that was read contained questions and answers with the Respondent. He agreed that when asked in his interview whether he was aware the female who threatened Scales was an MOS, the Respondent told him, "No, not at that time."

Noonan agreed that the Respondent said Scales told him that the female had a Police Department plaque in the window of her car. He recalled the Respondent saying in his interview that he called the 84 Precinct to try to ascertain the identity of the female officer. He agreed that he asked the Respondent during the interview whether he had any prior knowledge of her

identity or whether Scales claimed to have prepared an incident report, but the Respondent admitted he did not know.

Noonan admitted that the Respondent told him he signed the towing receipt for Ray's vehicle. He agreed that the Respondent said it was standard practice, and just because he signed it did not mean he had actually been present nor had anything to do with the towing of the vehicle. Noonan admitted that Scales said it was not the Respondent but [REDACTED] who had the vehicle towed.

Noonan acknowledged that he reviewed a security surveillance tape from the Atlantic Center Mall from the date in question as part of his investigation. He believed the Respondent provided a copy of the tape to his office. He admitted that review of the surveillance tape revealed what appeared to be the towing of Ray's illegally-parked red Kia from the location. He agreed that it also showed a male black, presumably [REDACTED] pointing and conversing with Scales at the location. Noonan admitted that he did not see any sort of fist fight between Scales and [REDACTED] on the tape. He stated that it was "a little bit choppy" and "not really complete." He assumed the man to be Scales, but it could have been another security guard as the video was "very grainy." He denied seeing anything else on the tape that showed some sort of physical altercation, but admitted it appeared to be incomplete. He acknowledged that Ray, not the Respondent, was the subject in the original case. He admitted that the Respondent later became a subject and received Charges after he was interviewed and gave his statement.

On redirect examination, Noonan recalled taking a break during the course of his Official Department Interview with the Respondent. He said he recalled inquiring further into the Respondent's knowledge that Ray was a police officer. He believed Scales told the Respondent he was involved in an incident with Ray, who had a police parking placard in her car. He

recalled asking the Respondent if Scales was in his office when he informed him about the dispute with the female who threatened him. He also recalled the Respondent mentioning that the female said her boyfriend was going to come back and "take care of" Scales. He agreed that the Respondent stated during his Official Department Interview that he knew the individual who had an incident with Scales was a police officer.

Noonan said the Respondent noted during his Official Department Interview that he called the Telephone Switchboard ("TS") and spoke to someone about the incident. He believed the Respondent explained the parking conditions at the Atlantic Center Mall, and though the mall provides parking, police officers have to obey the parking rules. He added that the Respondent said he gave a physical description of Ray and someone indicated that she was a member of the service who worked there. He admitted he recalled asking the Respondent for a description of Ray's vehicle, to which he replied, "A small red car." He acknowledged that the Respondent described [REDACTED]'s vehicle during the Official Department Interview as a dark green or black BMW, and noted there was a police parking placard in the windshield. He agreed it was safe to say that the car driven by [REDACTED] was different from the car driven by Ray.

Noonan stated he did not know whether the model of the vehicle was on the towing receipt the Respondent signed, but the make should have been on there. He said the Respondent indicated he knew the towed car was a red Kia during the interview, but Noonan did not know how the Respondent came to know that. He admitted the Respondent was able to identify the officer because he asked around the 84 Precinct who drove a red Kia and someone said he or she knew whom he was talking about.

On questioning by the Court, Noonan stated that he worked at IAB Group 32 from October of 2005 until May of 2008, when he was transferred to the Detective Squad.

On continued redirect examination, Noonan believed he asked the Respondent during his interview whether he had authorized off-duty employment and he said, "Maybe it's authorized now."

On continued cross-examination, Noonan agreed that the Respondent did not have current papers approving off-duty employment when the incident occurred, but he subsequently corrected that and had approval by the time he had a Department interview.

Police Officer Frederick F. Mitchell

Mitchell, a 17-year member of the Department, has been assigned to the 84 Precinct for sixteen-and-a-half years. He testified that he is assigned to the Traffic Enforcement Unit and is also the union delegate, which entails dealing with day-to-day issues among police officers and between supervisors and police officers. He stated that delegates are elected, and he had been one for six years.

Mitchell testified that he was assigned to the 84 Precinct on October 2, 2006. He said that he received a telephone call from the manager of security at the Atlantic Center Mall on that date. He denied that the individual identified himself as anything other than the manager of security. He stated that the caller told him one of his officers was involved in an incident there. The caller said she parked illegally, her car was towed, and she had a verbal altercation with one of the security guards. He estimated the conversation occurred early in the afternoon.

Mitchell said that he learned at his Official Department Interview that the caller was the Respondent. He said that he was asked by the sergeant if he knew the individual or that he was the manager of security. He testified that one of his officers had an Official Department Interview regarding the incident, and she said she had spoken to him about it. He noted that she

gave the Respondent's name to the lieutenant. He said that they asked him whether he had a conversation with the Respondent and whether he identified himself to Mitchell as the manager of security. He stated that the Respondent identified himself only as the manager of security.

Mitchell stated that the Respondent mentioned that Ray, one of Mitchell's officers, was involved. He asked why the Respondent was calling him, and the Respondent told him he was calling to inform Mitchell that Ray was involved in an incident in which her car was towed and his security guard was "beat up." He testified the Respondent told Mitchell his officer was involved in a verbal altercation and may know the individual who "beat up" his security guard. He stated that after that conversation, Mitchell told him he would "get back" to him. He said the Respondent noted he was calling because Mitchell was the delegate there. Mitchell asked where he had gotten the number and the Respondent said "from your [telephone] switchboard (TS) operator." He explained that TS operators are "basically the receptionist[s] for the command. They answer all the telephones, and you know, receive people when they come in." He denied that the Respondent mentioned anything about Department plaques during the conversation. Mitchell asked why the Respondent called him, noting that if it was a crime he should have called 911 instead.

Mitchell said that he called Ray, the police officer who was supposedly involved in the incident, after he finished speaking with the Respondent. He explained that Ray was a member of his command at the time. He testified that he asked what had happened, and she told him the security guard had her car towed. He advised her to notify the Department if she had an altercation with an individual, and that was the end of their conversation. He denied having any other conversation with Ray with respect to that incident. He stated that he found out at his

Official Department Interview that the caller who identified himself as manager of security was a member of the Police Department.

Stephen Darnel Scales

Scales is currently a security guard at Park Towers in New York City. He testified that he was employed at the Atlantic Center Mall from September of 2006 to January of 2008. He stated that when he worked at the Atlantic Center Mall, he surveyed the site, made sure that everything was "normal," reported anything "out of the normal," did "perimeter checks," and secured all property and persons of the building. He agreed that his job also entailed checking for parked vehicles. He explained that there was a system where one side of the street was parking for "cabbies" while the other side was parking for Target customers. He said they had to make sure everybody followed the parking system. He agreed that people obeyed the parking rules for the most part, but sometimes there would be an individual they would have to speak with to make sure he or she complied with all of the rules. He acknowledged that vehicles were towed, and estimated it occurred twice a day. He recalled being involved in the towing of cars owned by police officers, and estimated that occurred twice in his tenure there.

Scales testified that he had three different shifts while he worked at the Atlantic Center Mall. He stated that each shift was an eight-hour shift, and at different times he worked the morning shift, the day shift, or the night shift. He said that he was working at the Atlantic Center Mall on October 2, 2006. He thought he worked either the morning shift or the day shift that day, though he could not remember which one it was. He noted that he did not work the overnight shift. He acknowledged that he was involved in the towing of illegally-parked

vehicles on that day, and testified that one particular customer happened to be a police officer, who parked her vehicle in a restricted area and "just had the car sitting there for a while."

Scales denied that he learned the name of the police officer whom he conversed with on that date. He did not recall having been told her name, but thought he had seen pictures that might have been her, although he never saw them directly. When asked if he recalled identifying her, he responded that he did not remember, but he had "[p]robably seen a picture similar." He testified that he told her the rules of the mall. He stated that her windows were tinted, so he knocked on the window, but she ignored him. Scales thought she had music playing, so he knocked again and told her that she could not park there. He said that she looked at him, ignored him and put her plaque in the window. He testified that when he told her again, she just walked away from him and into the mall. He thought she was shopping there, but he was not sure. He stated it was his job to make sure that everyone adhered to the rules.

Scales said that his supervisor noticed on camera that the vehicle was parked in the wrong area. He testified that [REDACTED] was supervising that day, and she was in the office. He denied that [REDACTED] came down to where the vehicle was parked, but said "they" had to stay in the office at all times to make sure everything else was "copacetic." He stated that she asked him via radio what was going on. Scales explained that when he told his supervisor that the woman refused to move, [REDACTED] contacted the "tow car" and told them to tow the car away. He said that the tow truck came, towed the vehicle away, and the woman came back approximately ten minutes later. He stated that she saw him still in his post and asked him what was going on. He testified that he reminded her when she walked away that her car could get towed if she left it there. He said she was upset because her car was towed. He did not remember exactly what she said, but knew she used "kind of a rough tone." He said that she went to the tow truck driver and

asked how to pay, and the tow truck driver set up an amount for her to pay for the vehicle. He added that when she received her vehicle, the tow truck driver drove away.

Scales agreed that he recalled the woman cursing at him. He testified that she was very abrupt and very rude after she got her car back. He stated that he told her the rules were the rules, the car was towed, and it was not his fault. She said she could "do that" and could pay for it. He said she "c[ould] do it as much as she want[ed]." He testified that he told her if she ever came back hopefully she would adhere to the rules then. He told her that if she kept doing it "over and over again, [her] pocket [was] going to be hurt." She replied, "The only person that [was] going to be hurt [was Scales]." He said he asked her what she was referring to and she stated that he knew what she meant and started "saying threatening words." He remembered that one of the things she said was, "Oh, the boys [are] going to come back for you," and asked what time he got off work. He said that she "basically said the boys [were] going to come back with that thing." When asked whether she told him what she meant by "thing," he replied that he "kind of got a good assumption of what she meant by 'that thing.'"

Scales stated that she used direct profanity and cursed at him about her car when she was pulling away. He admitted that he did not remember the exact profanity, but he knew it was rude. He said that he kept calm in response because that was his job. He testified that while she threatened him, he told her he was there all day, and she had to do what she had to do.

Scales said that he informed [REDACTED] about the incident with the individual at the time and asked if he could go to the office to file a complaint. He stated that he usually had a lot of encounters like that but this one was on his "job" so he wanted to "go by the book" and make a complaint. He explained that he had to inform all of his supervisors because the incident happened on the site, and he wanted to "cover [his] back" just in case anything happened later

on. He stated that he informed [REDACTED] and the Respondent. He estimated that he informed the Respondent 15 minutes after the incident. He testified that he told the Respondent about the whole incident and how the female put her police plaque in the window, "so right there, you know, you [could] assume that she was a police officer." He denied that he had any other conversation with the Respondent about the individual, and said that the initial conversation was just to find out what was going on. He said that he told people at "the job" what happened because they wanted to know.

Scales testified that he filed a complaint after the incident and went back outside to his post, and "two minutes later," a male approached him regarding the incident. He stated that he did not know what the man was referring to because he came behind him. Scales said the man put his hand forcefully on his shoulder, and when he swung around to see who it was and brush him off, he saw the male, who asked him why he had his wife's car towed. He testified that he did not know what the man was talking about, and then the man described the car that had been towed. He stated that after he understood what the man was talking about, he told him that those were the rules and he was just doing his job. He said the man told him he did not care whether or not he was doing his job and "kind of like put his hand on [Scales'] chest," Scales swerved away again, and the man made threats in his face. He testified that he remembered the man saying "something about 'F' words" and using a lot of profanity in close proximity to his face.

Scales stated that he went over the radio after that and told his supervisor that the man was in his face, noting that he was not trying to get into anything on the job at that time. He put that "over the air," and then the man put his hands up as if he were going to fight him and went towards him. Scales demonstrated by putting two closed fists up and moving forward with his arms in a closed fist. He testified that he thought the man was going to swing, so he put his

hands up in defense in case the man threw a punch. He stated that he went over the air again and quickly said that the man was attacking him. He spoke with [REDACTED] over the radio. He testified that the last time he was on the radio he was loud and screaming because it was "kind of a high situation." He stated that the man flexed towards him as if he were going to hit him, Scales flexed towards him, and the man jumped back. He demonstrated by putting his arm up with a closed fist. He testified that when he flexed towards the man, he jumped back and started to walk back to his car, saying he would come back for him. He admitted that he was a little "on edge" at the time because the man had just "[gone] at him," and he asked why he was walking away, but the man just kept walking to the car. He noted that was when his employer and coworkers came to the scene.

Scales remembered his coworkers [REDACTED] and [REDACTED] coming to the scene. He said that the Respondent came to the scene while the man was walking away. He noted that when the Respondent approached him, Scales told the Respondent the man went in his face, the Respondent approached the car, and the man drove off. He admitted that he was "a little hot" that day, and was not focused on what had happened. He stated that he "kind of turned [his] back." He told the Respondent what the man said to him and explained the situation immediately after it occurred. He said he explained it to the Respondent because they had to follow protocol on what had happened.

Scales denied that the man identified himself. He stated that, with respect to the incidents involving the female and the male, he put what he had just testified to in the report. He said that the first incident report was only for the female because that was the way it happened. He explained he had the conversation with the female, put it in an incident report, and everything happened with the male when he went back outside. He stated that though he had an incident

report, he "kind of let it go. Like [he] felt that it was over so [he] let it go basically." He agreed that an incident report was a piece of paper that was filled out. When asked whether he submitted a written incident report, he admitted that he took it home with him. He denied that he ever turned it in to his job. He further denied that anything else happened with respect to the incident with the man.

On cross-examination, Scales stated that he did not cause any police incident report to be prepared. He denied that he went to a precinct to file a complaint, but stated that "some police" questioned him. He agreed that he recalled Noonan coming to Atlantic Center Mall and interviewing him about the incident. He acknowledged that Noonan asked whether he wanted to file a report against the man, which he declined at that point in time. He denied that he called 911 immediately after the incident with the male individual, but admitted he was not sure whether anyone else called 911. He acknowledged he would not describe what happened to him as being beaten up. He denied telling anyone that he was beaten up by the man who confronted him. He agreed that he had several conversations with the Respondent about what occurred on that particular date because the Respondent asked him what was going on. He estimated 20 or 30 minutes, "give or take," elapsed between the first encounter with the female whose car was towed and the confrontation with the male.

Scales admitted he did not recall whether the Respondent was present during the incident with the female whose car was towed. He acknowledged that [REDACTED] was his supervisor on the date in question, and agreed she was the one he spoke with who instructed him to have the car towed. He denied having a conversation with the Respondent during the first incident, and added that [REDACTED] was in charge at that point. He agreed that he had a conversation with the Respondent after the second incident and admitted he was "still a little excited" about it. He

acknowledged that he put the towing of the car and the male confronting him together in his mind at that point in time.

Scales agreed that the conversation with the Respondent took place in the office. He acknowledged it was possible that he mentioned the female had a plaque in her window when the car was towed. He agreed that the Respondent arrived at the "tail end" of the incident with the male, but by then the male was getting into his car and was about to drive away. He acknowledged that from the time the man confronted him and they exchanged words to the time the man got into his car and drove off was very short.

On redirect examination, Scales testified that he talked to the Respondent after the incident with the male. He stated that when he first had the conversation with the Respondent, he recalled telling him about the whole situation, from the first incident to the second incident.

The Respondent's Case

The Respondent called Detective Peter Pawelski as a witness and testified on his own behalf. The Respondent also placed in evidence the Respondent's off-duty employment application with a final action approval date of April 5, 2004 (Respondent's Exhibit ["RX"] A).

Detective Peter Pawelski

Pawelski, a 14-year member of the Department, has been assigned as a detective to the Chief of Detectives Investigations Unit for seven years. He explained that the unit handles all allegations of misconduct regarding members of the service within the Detective Bureau. He testified that his duties and responsibilities as a detective assigned to that unit are to investigate allegations of misconduct.

Pawelski agreed that he investigated case number 06075 involving the Respondent and worked alongside Sergeant Decker. He said he recalled that the initial allegations against the Respondent involved an off-duty dispute regarding a complainant dropping a keg of beer at the Respondent's off-duty employment. He denied there were any other allegations against the Respondent. He acknowledged that he personally interviewed the complainant over the telephone as a result of his investigation. He testified that the case was initially assigned to Sergeant Fazzolari, who "[went] out line of duty," and it was reassigned to Decker, but he was there when each of the sergeants were assigned to the case.

Pawelski stated that Colon said he was the assistant to a truck driver making routine delivery of metal kegs of beer to the Atlantic Center Mall. Colon said he dropped one of the kegs and the Respondent approached him complaining that he had cracked the concrete. He testified that Colon did not know the Respondent was a member of the service because he was wearing jeans and a tee shirt. Colon stated he and the Respondent had a verbal dispute and they were cursing at each other. He denied that Colon told him the Respondent threatened to punch him in the face. He acknowledged that he prepared a report after his conversation with Colon, and described it as a normal worksheet which included what Colon had said during the conversation. He denied there was any mention in the worksheet of the Respondent threatening to punch Colon in the face. He stated that something like that would definitely have been noted because they investigate acts of misconduct.

Pawelski agreed that Colon spoke about another employee at the Atlantic Center Mall with whom he had a problem. He believed the incident with the Respondent occurred on May 25, but Colon stated he had a verbal dispute earlier that month with a male who worked with the Respondent. Pawelski admitted he did not know the man's name, but Colon said he was telling

him how to do his job, and they had a verbal altercation and were "cursing each other out." He stated that Colon told the man something similar to "Don't tell me how the 'F' to do my job." He said that Colon told him that the man was present during his incident with the Respondent. He testified that Colon said he called 911 on that particular date because he felt intimidated, but it was unclear whether it was the Respondent or the other male who intimidated him. He stated that Colon said the Respondent was calm when the other male approached. When asked what misconduct he noted on the Respondent's part regarding the actual incident, he stated it was the Respondent's failure to report the off-duty incident to the Department. He denied there was any other misconduct regarding the Respondent's conduct during the incident itself.

On cross-examination, Pawelski acknowledged that Colon said he [Colon] and the Respondent were cursing back and forth. On redirect examination, Pawelski admitted that Colon did not state the specifics, but only that he and the Respondent were "cursing each other out." He said that Colon did not note whether it was one curse on the Respondent's part. When asked whether he recalled Colon claiming the Respondent said, "You're breaking my fucking sidewalk," he replied Colon said the Respondent told him he cracked the sidewalk, and did not elaborate "as far as curse words."

The Respondent

The Respondent, a 14-year member of the Department, has been assigned to the Brooklyn North Warrant Section for seven years. He testified that his duties and responsibilities as a detective assigned to that unit are to apprehend fugitives from court. He has been in the rank of detective for five years. He denied he had been the subject of any Charges and Specifications or formal discipline by the Department other than the current Charges against him. He stated

that he was assigned to Brooklyn North Warrants during the time period relevant to the Charges, January 1, 2006 through August 18, 2006. He said that he worked off-duty employment at the Atlantic Center Mall during that period of time. He described his duties and responsibilities as clerical, and said he was a manager. He explained that he worked as a direct liaison between the stores, walking around the property and making sure that all of the lights were working and "stuff like that."

The Respondent stated that he started working for the Atlantic Center Mall in 2004, while he was assigned to Brooklyn North Warrants. He testified that he submitted a request for off-duty employment when he first began working at the Atlantic Center Mall, and agreed that his application was approved. He said that he submitted a renewal of the off-duty employment application in October of 2006. He noted that the renewal was also eventually approved by the Department. He thought he had a current off-duty employment application with the Department on May 24, 2006, but they said he did not. He acknowledged that he was contesting the fact that he did not have a current renewal application on file with the Department between January 1, 2006 and August 18, 2006, and agreed he pleaded Guilty to that Specification. He testified that he was under the impression one only had to fill out an off-duty employment application when he or she first got the job. He admitted he did not know one had to fill it out every year until Decker told him. The Respondent stated that once Decker told him in October of 2006 that he was wrong, he went immediately to fill it out and get it updated.

The Respondent testified that he pleaded Guilty to the Specification that he worked over 20 hours on 31 occasions from January 1, 2006 to August 18, 2006. He stated that they had paid detail that came through the Department at that time. He said that a member of the service can work paid detail and off-duty employment "at exactly the same time[,] which would put [the

member] over the allotted hours.” He stated that Decker explained that one cannot put the two together, meaning that one rule has nothing to do with the other. He said he thought the hours increased and if he worked paid detail for 20 hours and off-duty employment for 20 hours, it was a total of 40 hours, but Decker said a member of the service could not do that. The Respondent stated Decker said it was okay if a member of the service worked paid detail and off-duty employment. He agreed that he understood at the time of testimony that the Patrol Guide does not allow a member of the service to work more than 20 hours in any given week, and said Decker pointed that out to him. He testified that a member is allowed to work paid detail and have off-duty employment, so long as the member does not do over 20 hours in one or the other.

The Respondent stated that he continued to work at the Atlantic Center Mall in the same position since the application was renewed. He acknowledged that he was presently in compliance with the rules and regulations of not working more than 20 hours a week. He testified that the only time he had ever been sick in the line of duty was when he was in a car accident and when he had his “arm ripped open on a fence chasing somebody.” He stated that he had never been out sick aside from those incidents. He acknowledged that he received a five-year Certificate of Perfect Attendance on or about June 5, 2007 for the previous five years in his work, which included the time period January 1, 2006 through August 18, 2006².

The Respondent stated that he was working off-duty employment at the Atlantic Center Mall on May 24, 2006. He agreed that an incident occurred around 8:30 a.m. between him and a vendor (identified as Colon) delivering something to the location. He testified that he was

² Court Exhibit (“CX”) 1 is a five-page document that includes a Certificate of Perfect Attendance for the Respondent dated June 5, 2007, a Certificate of Merit dated August 13, 2007, and three other Certificates of Merit dated October 9, 2007; December 27, 2007; and March 13, 2008.

walking outside when he saw Colon, a beer delivery person taking kegs off of a truck and slamming them to the ground. He said that he asked Colon how he was doing and said that he happened to be one of the managers at the Atlantic Center Mall. He asked Colon to refrain from dropping the kegs because he was cracking the concrete. In response, Colon said, "This is New York City property, I can do whatever I want, I pay my taxes." The Respondent told Colon that from Atlantic Avenue and Fort Greene, to Atlantic Avenue and Hanson Place was private property. He testified that Colon continued to take off kegs and smash the concrete. He told Colon that he would not be able to make the delivery at the Atlantic Center Mall. He stated that Colon was "irate" and was "yelling back and forth," but he still told him he would not be able to make the delivery. He testified that Colon said he wanted to call the police, though he did not say it directly to the Respondent. He said that he did not care if Colon called the police because he did not view it as a police incident where one would have to call the police.

The Respondent testified that Eon Adamson and a "whole bunch of officers" were there. He agreed that he was on Fort Greene Place, a road that runs through the middle of the Atlantic Center Mall. He stated that the Atlantic Center Mall is a shopping mall located at 625 Atlantic Avenue. He said it was not the intersection of Atlantic Avenue and Flatbush Avenue in Brooklyn because that was on the other side of the mall, 139 Flatbush Avenue. He acknowledged that it was close to the big shopping area. He testified that Fort Greene Place was a private road. The Respondent stated that he was not in uniform, but was wearing "khakis and like probably a shirt that said 'Atlantic Center.'" He said that the slamming of the kegs into the ground first alerted his attention to the beer delivery person. He acknowledged that he observed whether the kegs were causing damage, noted that the concrete was getting cracked, and asked the man to stop, but he continued.

The Respondent stated that he had a conversation with Colon about what was occurring. He admitted that the conversation became a little "heated" at some point in time. He testified that he told Colon that if he continued, he would not be able to make the delivery there, but Colon continued. He stated that he then told Colon that he could not make the delivery, and Colon started yelling and became irate. The man said, "Oh, I am going to call the police," but he admitted he did not think that Colon would make a telephone call at that point in time. The Respondent answered, "Call whoever you want." He testified that he then went back to his office. He agreed that the police responded. When asked if he knew how they came to respond to the location, he said he saw them "out there" everyday. He stated that he knew they responded to the location because someone called in an incident, but admitted that at that point he had not thought Colon had really called the police.

The Respondent said that he had a very brief conversation with Adamson, whom he referred to by his first name, Eon. He described his conversation with Adamson as "very casual." He stated that Adamson came over and referred to the Respondent by his nickname, "Woody." He admitted that he did not think Adamson knew his real name. He testified that Adamson said, "Hey, Woody, come on. Let this guy make a delivery." He replied that he would not because the man cracked the concrete and destroyed the property. The Respondent said he left, and that was the end of the conversation. He admitted he was not aware what Adamson did at that point in time, and did not know whether a patrol supervisor responded to the scene. He denied asking Adamson to request a patrol supervisor to respond to the location because he did not believe that it was a police matter. He admitted that in hindsight, he would have called the patrol supervisor, but at that point he personally did not think he had done anything criminal. He stated that he did not think Colon had purposely done anything criminal, otherwise he would

have called the police. He admitted that now knowing the rules he would call the police, but at that time, he did not think it was a police issue.

On cross-examination, the Respondent agreed that he had a verbal altercation with Colon, the individual who was delivering kegs of beer. He said that he observed Colon drop "[a] few" kegs of beer. He stated that he heard the first one and then asked Colon to stop, but he did it again. He estimated Colon did it at least four or five times. He denied yelling at Colon at any point in time, and stated that he did not really yell at people. He also denied cursing at Colon.

The Respondent stated that he was not the manager of stores within the mall, as each store was its own vendor. He acknowledged that, as manager of security of the mall, he could make the determination regarding who could deliver to each individual vendor. He said that if he felt an individual was destroying the property, he could keep that individual from making a delivery. He agreed that in his mind the matter did not rise to the level of criminal misconduct or criminal allegations. He acknowledged that, knowing what he knew now, an incident was a police incident if the police responded to a scene where he was personally involved. He admitted, however, that he did not believe the incident on May 24, 2006 was a police incident at that time. He denied that he was "standing right there" when Colon called the police. He agreed that he occasionally saw Adamson at and around the mall.

The Respondent acknowledged that he submitted an application for renewal of his off-duty employment in October (DX 1). He stated that his captain signed it on October 27, 2006, but it did not have a date on the bottom, so he could not say when it was approved.

The Respondent stated that he left after the conversation with Colon, but Colon was still yelling and was with somebody else. He said that Colon was "cursing and carrying on," but was not speaking directly to him. He stated that Colon used "bad language," but was talking to his

own partner. He denied that Colon cursed at him or that he cursed at Colon. He said he had no reason to curse at Colon. He agreed that he went back to his office after the incident. The Respondent acknowledged that he did not only respond to incidents involving criminal allegations as a member of the service.

The Respondent stated that Colon was irate about the situation, but he had already walked away from him. He said that once Colon started acting up and yelling, he saw no reason to debate with him. He stated that he had already made his decision and saw no reason why he should stand there and argue with him. He noted that he had already told Colon he could not make the delivery.

The Respondent agreed that Colon asked him if his partner could deliver the kegs of beer if he was not allowed to. He said he told Colon's partner that he could deliver the beer, but the partner said he was not going to do it by himself. He then stated that Colon asked him if his partner could deliver the beer, and he said no. The Respondent said that Colon apologized for his actions, but he still said no. He stated that "the people" eventually came from upstairs and took the beer.

During further cross-examination, the Respondent said that he originally submitted an application regarding his employment at the Atlantic Center Mall which was approved in April of 2004, but he did not submit a renewal application for employment the following year. He agreed that he testified previously that he was unaware he had to put one in every year. He acknowledged that he was instructed to submit a renewal application upon being interviewed. He agreed that he submitted that application and it was subsequently approved on December 4, 2006. He admitted that he did not have a current application on file with the Employee

Management Division the entire year of 2006 up until December 4. Currently, he has been approved for off-duty employment and remains employed by the Atlantic Center Mall.

The Respondent acknowledged that he was working at the Atlantic Center Mall on October 2, 2006, the date of the incident in question in Specification Nos. 2, 3 and 4. He stated that he became aware of an incident involving Scales, one of his employees. He testified that his office was upstairs and all of the "security people" worked downstairs. He stated that someone called and said Scales had an argument with a female who was sending someone back to "beat him up." He denied that Scales told him that she was a member of the service. He said that approximately 20 minutes to a half hour later, he heard someone yelling, "They are about to fight," and he ran downstairs and went outside, where everybody was. He said he saw a man "doing a quick step." He denied that the individual was running from the location, but said he was walking very fast "like choo, choo, choo towards his car," which did not indicate anything to him. The Respondent said he knew everyone was looking at the man, so he asked him how he was doing and if he could help him. He testified that the man turned to him in two seconds and said, "I'm a cop." The Respondent asked, "You're a cop?" to which the man replied, "No, I'm not," got into his car, and drove off.

The Respondent stated that when the man drove off, he saw a plaque "in there" that said "84" on the shield. He said that he stayed outside a little while and talked to different people. He testified that he saw Scales briefly and went back to his office. He stated that he went down later to talk to Scales and find out what happened. He testified that Scales did not want to call the police nor did he want to get involved "like that." He noted that he thanked Scales.

The Respondent said that he called the 84 Precinct and told them what he had from the tow receipt that he signed. He stated that he signed it when he was in the hallway. He testified

that he spoke to someone at the TS. He said that when he called the 84 Precinct, he did not tell them, "This is Detective Woodard, this is what happened." He added that he "never [told] anybody that [he was] a cop. Never." He stated that when he called them, he said, "This is Robert Woodard, I am a security guard at the Atlantic Center Mall." He explained to them what happened and asked if they had a member of the service there who looked like the female from the incident and drove a certain type of car. In response, they said, "Yeah, hold on, hold on." He testified that they asked for his number and he gave it to them. He stated that someone called him back and noted that he spoke to two people, someone at the TS, although he could not remember if it was a man or a woman, and the Integrity Control Officer. He said that the individual said, "Well, you know, this is an off-duty incident." He testified that when they called him back they referred to him as Detective Woodard, and denied that he had told them he was a detective. He stated that they told him he had to call a certain telephone number, "the number on top of [his] laptop." He said they asked if he had the number to IAB, the Respondent admitted he did not, he was given the number, and he called it.

The Respondent stated that he obtained the name of the female officer when he called IAB. He said that he had answers to whatever they asked him. He testified that when Noonan came, he told the Respondent they had spoken on the telephone the other day. He said Noonan asked what happened, as Scales did not want to talk to them. The Respondent stated that he told Scales he had to cooperate with them. He testified that Noonan "got everything from" Scales. Noonan asked if there was any surveillance and the Respondent admitted he did not know but they could take a look. He then said he gave "them" the video of everything "they" wanted. He agreed that he looked for a copy of the incident report. He stated that Scales told him there was an incident report, but he looked and could not find it. He admitted that he did not know what

happened to it until the day of testimony, when he discovered Scales kept it and never brought it back.

The Respondent denied that he had anything to do with the towing of the female's vehicle, and noted that he had nothing to do with the towing of any type of vehicle at the Atlantic Center Mall. He further denied that he had any information before the second incident that the female whose vehicle was towed was a member of the service. He said that he found out she was possibly a police officer when he called the 84 Precinct. He then stated that he learned from Scales she was possibly a police officer after he went back to his office and they spoke after everything had calmed down. He noted it was after both incidents were over, and acknowledged that Scales explained them entirely. He testified that Scales told him the individual put a placard inside the window. The Respondent asked what Scales could tell him about the plaque, but Scales could not tell him anything. However, Scales told him that she was the individual who said she would send someone back for him, so he had her name and license plate number on the receipt. He stated he called the 84 Precinct and told them exactly what he had and they said they would call him back, which they did.

The Respondent testified that the incident occurred the same day he was able to confirm the female was a police officer assigned to the 84 Precinct and called IAB. He said he did not take any further steps to stop [REDACTED] or try to get his identification because it happened in less than 30 seconds. He stated that he did not know how he would have stopped him or what he would have stopped him for. He said he could not pull his gun or hold [REDACTED] at gunpoint. He noted he would have had to jump on him to physically hold him, but he did not know why he would have been holding him at that point. He denied observing any interaction between the

male and Scales prior to the incident. He further denied that Scales told him anything about what the male allegedly had done to him at that point in time.

The Respondent testified that he first noticed the plaque in the window of the vehicle when [REDACTED] drove off. He stated that they have command numbers on them, which was how he knew it was from the 84 Precinct. He agreed that was when he called the 84 Precinct to ascertain whether the person driving the BMW was connected to the woman whose car was towed. He said he did not call IAB right after the individual drove off because he did not know what he would have told them as he did not have enough information at that point.

The Respondent agreed that he learned a parking plaque was in the window of the female's car during his conversation with Scales after the two incidents had occurred. He acknowledged that the police responded to the location because of that incident. He denied that he called 911 from the location. He stated that he did not call because his office was upstairs and he was not involved in the day-to-day activities downstairs and had no knowledge of what happened until after the fact. He denied that Scales wanted the police called to the location. He acknowledged that he had no knowledge the female was possibly a police officer after her car was towed and before the male came and had the confrontation with Scales.

The Respondent estimated that he had taken police action while off-duty five times prior to the date in question, and thought his first time was while he was "a rookie cop." He stated that there were three people trying to rob an individual in the train station with a gun, and he apprehended two out of the three. He admitted that he could not remember the incidents in order, but another time there was an attempted rape inside the mall in the dental office by three individuals, and he apprehended all of them. The Respondent said there was another time in a Chinese restaurant where people refused to pay for the food. He noted that he went to the

Chinese restaurant all the time and they knew he was a member of the service because he went there often. He stated he tried to convince the people to pay, but they did not want to. He testified they started "beating up the guy," so he arrested them. He said at the mall just recently a "cabbie" hit another man in the head with a pipe. He stated that he saw the cabbie, followed him, called the 84 Detective Squad, and asked if they had a complaint because he was following a "guy." He added that they went and "she got him." He testified that as a member of Warrants, he saw the warrants and "I-Cards."³ He said that he saw an individual he knew and had seen in the area many times, and he followed the individual. He stated that he called up the detective in charge, who said he would be right there. The Respondent said he stayed with the individual for approximately 10 minutes until the detective arrived.

On cross-examination, the Respondent agreed he had been involved in several off-duty police incidents where he took police action. When asked if he recalled an incident involving a police shooting, he admitted he had forgotten about that incident and could not remember all of them. He denied it was a shooting and said he was not there for the shooting. He agreed he was present at an Official Department Interview on June 21, 2007, although he did not know the exact date. He acknowledged he had representation there, but did not recall the name of the attorney who had been present. He recalled being apprised of the Patrol Guide section involving false and misleading statements. He acknowledged that he felt he answered truthfully at the hearing, and stated that he always answered truthfully and to the best of his recollection.

The Respondent denied that Scales told him the individual with whom he had the incident was a police officer. When asked whether he remembered saying at his Official Department Interview that the female "might have been" a police officer because she had a plaque and Scales "told [him] that she was a police officer, that she said she was a police officer," he stated that it

³ Investigation cards used in the Department that contain photographs and information of persons wanted for crimes.

was a matter of when Scales told him. He stated he recalled that portion of his Official Department Interview and if it was in the transcript, he was "pretty sure" that was what he had said. He agreed that he signed towing receipts, but denied that he towed the cars.

The Respondent acknowledged that he found out the individual he later knew as Ray was a police officer when he contacted the 84 Precinct. He explained that he called the 84 Precinct because of the problem that he had with the two individuals and the car he had seen that had an 84 Precinct plaque. He stated that he told the 84 Precinct everything that he had and described the incident to them, and then they told him who was involved. He agreed that he said he called IAB, and noted that he had the number with him during testimony. He denied that he received a log number when he called IAB, and said he did not ask for one. He further denied identifying himself as a member of the service when he called IAB.

The Respondent admitted that [REDACTED], whom he knew as "the guy at the car," informed him that he was a police officer. He stated that he said, "Excuse me sir. Can I help you?" In response, [REDACTED] said, "No, I'm a police officer [...]o I'm not," got into his car, and drove off. He acknowledged that he saw the placard when [REDACTED] drove off, noting it was in the front windshield of the car. He could not recall whether he had ever seen Ray's vehicle, the one that had been towed away. He did not know what would refresh his memory with respect to that. He said that if he provided a description of Ray's vehicle at the Official Department Interview, then he did, but he did not remember. He acknowledged saying during his interview that he had information that the female might be a member of the service, and he called the 84 Precinct and described the car and the "girl." When asked whether it was safe to say he knew the individual whose car he had described was a police officer before he called the

84 Precinct, he replied, "After the fact I got the information from [Scales]." He acknowledged that he received the information from Scales when he spoke to him afterwards.

The Respondent agreed that there was free parking for police officers at the mall, but did not recall mentioning that to the individual he spoke to on the telephone at the 84 Precinct, although he admitted he could have mentioned it. He explained that the Department of Motor Vehicles was upstairs at the mall and when police officers come to testify, they park their patrol cars and personal cars downstairs within the mall. He denied that he called the 84 Precinct with respect to "people in general" illegally parking at the mall. He said that the purpose of his call was to find out information. He denied that he called the 84 Precinct and said, "This is Detective Woodard." He stated that he called the 84 Precinct as Robert Woodard, an employee and the security manager of the Atlantic Center Mall, to complain about someone who parked there, and to ask them whether they could help him identify the individual. He said he did not know the individual was a police officer when he called, but believed he was trying to ascertain whether or not she was a police officer.

The Respondent acknowledged that he answered questions as truthfully as he possibly could at his Official Department Interview. He said he did not recall the content of the conversation with the person who called him back, but he could have said, "Listen, we have a problem down here with officers putting their cars here. Please, you know, we sent out a memo to all the precincts [...] in regards. Please let them know not to park down here because they'll get their cars towed. And we provide free parking for them downstairs." He noted that was the truth.

The Respondent admitted that he saw a green placard in the car of the individual he later came to know as [REDACTED], and the individual drove away. He stated that he called the precinct

that day and told them everything that happened. He said he could have mentioned the green placard to them during that conversation, but admitted he was not "a hundred percent sure." He noted that Mitchell was not the first person he spoke to. He agreed that he heard Mitchell's testimony earlier, but did not remember whether he mentioned a police placard to Mitchell.

The Respondent acknowledged it was his testimony that he saw the plaque after [REDACTED] was driving away, adding that [REDACTED] got into his car and the Respondent saw the plaque. When asked whether he saw the plaque before or after [REDACTED] went into the vehicle, he said it happened in 30 seconds. He stated [REDACTED] could have been getting in the vehicle when he saw it, but he could not remember. He said he would not say because it happened so quickly. He admitted that if he had to say one or the other, his best recollection was most likely from when it first happened.

On redirect examination, the Respondent testified that the first time Scales told him he believed the female was a police officer was after the whole event had already happened, when he eventually went to the downstairs office. He said that he spoke with Scales later, when everything had already transpired. He stated that the belief the female was a police officer was based on Scales telling him he believed she was a police officer. He added that he knew the other person had a placard, and that was why he called the 84 Precinct. The Respondent agreed that when questioned during his Official Department Interview regarding whether he was aware the female was a police officer, he said he had not been aware at that time. He stated that he was told he was a witness when he had the Official Department Interview with IAB. He said that his recollection would be refreshed if he were shown something, as he had just been ordered to go to the interview. He agreed that he was a witness when he was questioned by IAB about the incident. He stated that he had "another gentleman" there with him during the questioning by

IAB. He said that Detective Silverman was there, and added that Sergeant Cortez was in the room as well. He denied that anyone else was representing him, and said nobody else was present.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82537/07 Specification No. 1

The Respondent stands charged with wrongfully and without just cause engaging in off-duty employment without authority or permission in that he was a manager at the Atlantic Center Mall. The Respondent is found Guilty as charged. The Respondent pleaded Guilty and admitted that between January 1, 2006 and August 18, 2006 he worked as a manager without the permission of the Department. The Respondent acknowledged that in 2004 he filed for permission to work off-duty at the Atlantic Center Mall and was approved; but he was unaware that he had to file a renewal request each year to continue off-duty employment.

Accordingly, because the Respondent pleaded Guilty to Specification No. 1 he is found Guilty of Specification No. 1.

Specification No. 2

The Respondent stands charged herein with wrongfully working in excess of 20 hours off-duty employment on 31 occasions. The Respondent is found Guilty as charged. The Respondent pleaded Guilty and admitted that he worked in excess of 20 hours. He explained that he thought he could work 20 hours of off-duty employment in a week as well as 20 hours of a paid detail in a week. The Respondent was mistaken. He explained that he later learned that a

member of the service's paid detail and/or off-duty employment is limited to a total of only 20 hours a week.

Accordingly, because the Respondent pleaded Guilty to Specification No. 2 he is found Guilty of Specification No. 2.

Specification No. 3

The Respondent stands charged herein with being involved in a police incident while off-duty on May 24, 2006 and the Respondent failed to request the response of a patrol supervisor. The Respondent is found Guilty as charged. Evidence adduced at trial established that the Respondent had a verbal altercation with a truck driver, Colon, who was attempting to make a delivery at the Atlantic Center Mall. The Respondent was working as a manager there and ordered the truck driver to stop dropping the kegs of beer to the ground. The Respondent said that Colon did not stop dropping the kegs of beer and in turn cracked the sidewalk of the mall which is private property. The Respondent said he would not allow Colon to deliver the beer within the mall that day. Although Colon threatened to call the police, the Respondent stated that he did not believe the threat. He also stated that he did not believe at the time that the actions of Colon were criminal warranting his response to call a patrol supervisor to the scene.

The Respondent later stated at trial that in hindsight, he realized the altercation he had with Colon was such that the police responded to the scene and, even if the matter was not criminal in nature, it did amount to a police incident where the presence of a patrol supervisor would have been warranted.

Accordingly, based on the above, I find the Respondent Guilty of Specification No. 3.

Disciplinary Case No. 83270/07
Specification No. 1

The Respondent stands charged in engaging in off-duty employment from August 20, 2006 through December 4, 2006 without authority or permission. The Respondent is found Guilty as charged. The Respondent pleaded Guilty and admitted that he submitted an application in 2004 to work as a manager at the Atlantic Center Mall. He also admitted that he failed to renew the application at the end of the year and in subsequent years such that on August 20, 2006 through December 4, 2006, he was working off-duty without the permission of the Department.

Accordingly, because the Respondent has pleaded Guilty to Specification No. 1 he is found Guilty of Specification No. 1.

Specification No. 2

The Respondent stands charged with failing to take police action on October 2, 2006 while working as a manager of security at the Atlantic Center Mall. It is alleged that the Respondent was informed by Scales, an Atlantic Center Mall Security Guard, that he had been physically assaulted and that the Respondent failed to request the response of a patrol supervisor.

It was established at trial that Scales had a verbal altercation with a female and then a male confronted him and made some contact with his shoulder area. Scales testified that he never told anyone that he was "beaten up" by the man and the conduct he described does not amount to an assault. Scales testified that the Respondent appeared on the scene after the fact. Scales stated that although he discussed the matter with the Respondent and wrote up a report of the incident, he never submitted or filed the report with the Atlantic Center Mall. Scales also

stated that although he spoke to the police about the matter, he never called 911, and he declined to have a police report filed in this matter.

Given the fact that Scales did not get assaulted, that he never called the police or sought to file either a police report or a complaint report with his job, it is not clear to this Court that the Respondent had any duty to take any police action. In addition, because the Respondent was not involved in the incident he was not obligated to request the response of a patrol supervisor.

Accordingly, I find the Respondent Not Guilty of Specification No. 2.

Specification No. 3

The Respondent stands charged herein with engaging in conduct prejudicial to the good order, efficiency and discipline of the Department in that on October 2, 2006, he failed to notify IAB that an individual identified himself as a police officer and then recanted and the person was in possession of New York City Police Department placard. I find the Respondent Not Guilty as charged.

No proof was offered to establish that the Respondent failed to contact IAB. Detective Pawelski never investigated this issue and Sergeant Noonan never testified that he asked the Respondent if he contacted IAB. The Respondent testified that he obtained information about the incident from his observations, discussions with Scales and then he called the 84 Precinct to report the incident involving the female police officer. The Respondent said that he obtained the officer's name from the tow receipt and he had the license plate number of her car from the receipt also. Once he called the command, he stated that he spoke with two individuals including the 84 Precinct Integrity Control Officer. The Respondent said he was instructed to contact IAB, he was given the number and he did contact IAB about the incident.

The Respondent explained that no one asked him whether he called IAB during his Official Department Interview. He also stated that he did not get a log number at the time he spoke to IAB. While perhaps he should have gotten that number, he is not charged with that. He is charged with failing to notify IAB and there is no proof of that. His testimony that he did so is unchallenged.

Accordingly, I find the Respondent Not Guilty of Specification No. 3.

Specification No. 4

The Respondent stands charged with failing to take police action in that after a person identified himself as a police officer, he failed to request Department identification from said individual, and when said individual recanted the statement, the Respondent failed to investigate the individual's possession of a New York City Police Department placard and take necessary corrective action. I find the Respondent Not Guilty as charged. Evidence adduced at trial established that the Respondent observed the male and then he attempted to engage him in conversation. The male identified himself as a police officer to the Respondent, but then quickly recanted the statement and entered his car and left the area. The Respondent testified that this happened in a 30-second period. The Respondent testified that he used the information that he learned which included the fact that he observed a plaque from the 84 Precinct in the car, a description of the vehicle involved and information he obtained from Scales to make a telephone call to the 84 Precinct. Given the fact that the Respondent was off-duty at the time, he was without authority to demand Department identification from the male as charged. He was with authority, however, to call the 84 Precinct Station House and make inquiries since he was acting as the head of security at the mall. The Respondent testified that his call to the station house

helped him to ascertain that the car at the mall belonged to a female police officer from the 84 Precinct. By all accounts, it was the Respondent's involvement in this matter which led to some disciplinary action being taken against the female police officer.

Accordingly, I find the Respondent Not Guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Police Department on February 28, 1994. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent pleaded Guilty and was found Guilty of working off-duty employment without permission or authority for a year from January 1, 2006 through December 4, 2006. The Respondent also pleaded Guilty and was found Guilty of working in excess of 20 hours on 31 occasions. The Respondent was also found Guilty of failing to call a patrol supervisor to the scene with respect to the incident he had at the Atlantic Center Mall with Colon on May 24, 2006. Regarding the off-duty employment charges, the Assistant Department Advocate cited several cases [79907/04, 82182/06, and 79425/03] where the penalties ranged from 20 to 23 days for members of the service who failed to obtain permission for off-duty employment. This case does not fit into those scenarios. In this instance, the Respondent submitted an off-duty application in 2004 to work at the Atlantic Center Mall which was approved. He testified in mitigation of this charge that he continued to work there through 2006 and was unaware that he had to file a renewal for off-duty employment each year. In further mitigation, the Respondent

testified that he had an Official Department Interview in October 2006 when he first learned that he needed to file a renewal application for off-duty employment. A review of DX 1 in evidence shows that the Respondent immediately filed such a renewal application on October 27, 2006 because the renewal box is marked. He received approval to work off-duty within a week of submitting the application. The cited cases do not address these mitigating factors and as such, are not pertinent to the issue of penalty in this matter.

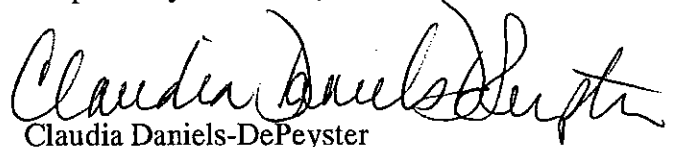
With respect to the issue of working over 20 hours on 31 occasions, the Respondent testified in mitigation of the charge that he misinterpreted the paid detail and off-duty employment rules. He explained that once he learned that he could work the paid detail as well as off-duty employment, he thought he could work up to 20 hours in each. He later learned that there was a cap of 20 hours a week *in toto*. I found this mitigating testimony to be persuasive. It must be noted that in reviewing the Respondent's service record, he was rated Highly Competent and Above Highly Competent for 2004, 2005 and 2006. In addition, he received a five-year Perfect Attendance Certificate in June 2007 and four Certificates of Merit from his Commanding Officer at the Warrant Division for exceptional performance of investigative duties [See Court Exhibit (CX) 1]. Thus his off-duty employment did not impact the performance of his police duties.

With respect to the failure to contact a patrol supervisor, the Respondent testified that at the time his interaction with Colon did not rise to the level of criminal activity such that the need for a patrol supervisor was not warranted. He did note, however, that in hindsight, since a police officer did respond to the scene, the matter did become a police incident even though it was not criminal in nature. I did credit the Respondent's initial belief as a mitigating factor that the matter did not warrant the response of a patrol supervisor. I also note that the demeanor of

Colon was one who was defiant when it came to authority and who acknowledged having an altercation with another Atlantic Center Mall security personnel on a separate occasion.

Therefore, based on the mitigating factors presented by the Respondent and his service record, I recommend that he forfeit ten vacation days to resolve the charges of which he was found Guilty.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

